No. 20324

In the United States Court of Appeals for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

CARPENTERS LOCAL NO. 2133, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO; and SALEM BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO, RESPONDENTS

On Petition for Enforcement of an Order of the National Labor Relations Board

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

ARNOLD ORDMAN,
General Counsel,

DOMINICK L. MANOLI,
Associate General Counsel,

MARCEL MALLET-PREVOST,
Assistant General Counsel,

GLEN M. BENDIXSEN,
Attorney,

National Labor Relations Board.

INDEX

AUTHORITIES CITED

Cases:

Cases—Continued Page

Cases—Continued

Statute:

In the United States Court of Appeals for the Ninth Circuit

No. 20324

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

CARPENTERS LOCAL NO. 2133, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO; and SALEM BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO, RESPONDENTS

On Petition for Enforcement of an Order of the National Labor Relations Board

---

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

JURISDICTION

This case is before the Court upon the petition of the Board, pursuant to Section 10(e) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. Sec. 151, *et seq.*),[1] for enforce-

[1] Pertinent provisions of the Act are set forth *infra*, pp. 20-24.

ment of its order, issued against respondents on April 1, 1965 (R. 17-25, 35-36),[2] and reported at 151 NLRB No. 133. This Court has jurisdiction of the proceedings, the unfair labor practices having occurred in Albany, Oregon, within this judicial circuit. The issue of whether the Board properly exercised jurisdiction in the proceeding is discussed *infra*, pp. 9-10.

STATEMENT OF THE CASE

I. The Board's Findings of Fact

The Board found that respondents violated Section 8(b)(7)(C) of the Act by picketing an employer with an object of forcing or requiring him to recognize and bargain with respondents as the collective bargaining representative of his employees, without filing a petition for a Board election under Section 9(c) of the Act within a reasonable period of time from the commencement of the picketing. The evidence upon which the Board based its finding is summarized below.

A. *The employer's operations in interstate commerce*

Leonard V. Ryan, for more than 9 years, has constructed residential and other dwellings in Salem,

---

[2] References designated "R." are to Volume I of the record as reproduced pursuant to Rule 10 of this Court. References designated "Tr." are to the reporter's transcript of testimony as reproduced in Volume II of the record. "GCX." refers to the General Counsel's exhibits. Whenever in a series of references a semicolon appears, those preceding the semicolon are to the Board's findings; those following are to the supporting evidence.

Oregon, under the name of Leonard Ryan, Builder. Ryan also owns all the stock and manages and controls Swept Wing Motel, Inc., an Oregon corporation. It is not disputed that Leonard Ryan, Builder and Swept Wing constitute a single employer under the Act for jurisdictional purposes, and they are hereafter referred to collectively as "Ryan" (R. 17; Tr. 6, 7-8).

In January 1964 [3] Ryan began construction of 34 units of a motel on a ten acre tract he owns in Albany, Oregon. He planned to complete construction of the 34 units by April 15, and to finish an additional 32 units and a restaurant by June 15 (R. 18-19; Tr. 8, 12).

At the time of the hearing in the instant case (May 27), in the construction and furnishing of the 34 units of the motel Ryan had purchased $54,788.91 worth of materials which were shipped into Oregon from out-of-state sources (R. 18, 35 n. 1; Tr. 9-57, 79-84, GCX 2A-2D, 3, 4A-4B, 5A-5B, 6A-6B, 7, 8A-8C, 9, 10).

B. *Respondents request Ryan to sign a union contract, and when he refuses establish a picket line declaring he is nonunion*

To build the basic structure for the motel, Ryan employed nonunion carpenters and laborers who had previously worked for him in Salem. He engaged three subcontractors who were union to do the plumbing, plastering and electrical work. In addition, he

---

[3] All dates hereafter refer to 1964 unless otherwise indicated.

engaged several other subcontractors whom he regularly used in Salem and who were nonunion (R. 19; Tr. 7, 12, 58-62).

Respondent Carpenters is a constituent member of respondent Council. Early in January, shortly after construction started, Carpenters' business representative and financial secretary, Carl Krutsinger, came to the job site and asked Ryan how he was going to "handle the job." Ryan replied that he had built houses in Salem for several years with various nonunion carpenters and both union and nonunion subcontractors, and that he planned to use the same employees and subcontractors in Albany (R. 19; Tr. 66-68).

Ryan heard nothing more from any of respondents' representatives until February 12. On that date a picket appeared at the jobsite bearing a sign with the following legend (R. 19 n. 9; Tr. 64-65, 68, 123-124):

RYAN
is doing this work
NON-UNION
No dispute with
Any other Contr.
BLDG. TRADES CCL SALEM

The picketing was authorized and was carried on in the name of the Council upon the request of the Carpenters and other constituent members of the Council (R. 19; Tr. 131-132).

The two employees working for the union plumbing subcontractor immediately walked off the job.

Before doing so, they asked Ryan to see about "getting the picket taken off so that they could go back to work" (R. 19; Tr. 68-69, 103-104).

About a week later, Ryan went to the Labor Temple in Salem and told Charles Westergard, Council secretary, that he had built houses in Salem for nine years, and that though the home building business in Salem was nonunion he had often used union subcontractors. Ryan told Westergard he would like to use the same men and subcontractors in Albany. Westergard stated that he understood the problem, and would see what he could do about removing the picket (R. 19; Tr. 70).

As the picketing continued, Ryan tried, without success, to call Westergard. After a week passed, Ryan again went to Westergard's office. Westergard was not there. However, Ryan was told that no decision had been reached about the picketing, but that there was to be a meeting at noon the next day, in Albany, between Carpenters' Representative Krutsinger and the secretary of the Painters' local. Ryan agreed to meet with them at the Albany jobsite (R. 20; Tr. 71).

The next day, February 26, Ryan met the representative of the Painters' local at the jobsite, but Krutsinger did not appear (R. 20; Tr. 71-72).

Later that day, Ryan went to the Carpenters' offices and asked Krutsinger what he wanted him "to do." Krutsinger replied that he wanted Ryan "to sign a contract." Ryan reiterated his generally nonunion operations in Salem. Krutsinger then stated

that he would let Ryan sign a "short form contract." Ryan replied that he did not see how this "would help." Krutsinger said that perhaps Ryan could "sign a contract in Albany and not in Salem." Ryan answered that he did not think this would help either. Krutsinger finally stated that he was going to a Council meeting that night in Salem, and that he would talk to Secretary Westergard. He told Ryan that in the event they permitted the job to proceed, the work on the additional 32 motel units and the restaurant "would have to be union" (R. 20; 72-73).

A few days later, about March 1, Ryan consulted Alfred P. Blair, manager of the Cascade Employers Association, Inc., of which Ryan is a member. Blair called the Carpenters and talked to Krutsinger while Ryan listened on an extension. Blair asked Krutsinger what he wanted Ryan to do at the motel jobsite in Albany. Krutsinger stated that he could not turn his back on the job and that he wanted Ryan "to sign a contract." Blair replied that the building business in Salem operated under nonunion conditions, that Ryan had to compete on that basis, and that therefore he could not sign a contract since he could not "be union" in Albany and "not" in Salem. Krutsinger replied that Ryan would have "to sign a union contract in order to get rid of the picket" and in order to use the "union subcontractors" he wanted on the job[4] (R. 20; Tr. 75-78, 111-115).

---

[4] Krutsinger denied that he demanded that Ryan sign a union contract, either on February 26 or on March 1. The Trial Examiner, however, for reasons stated in his Decision,

The next day, about March 1, Blair called the Council and asked Westergard if he had reviewed allowing Ryan's union subcontractors to perform their work. Westergard said he was going to discuss the matter with the whole Council at the first of the week. Blair asked to be notified promptly of the Council's decision, but Blair did not hear anything further from Westergard (R. 20; Tr. 117-117).

Shortly thereafter Ryan notified Clarence Bishop, a union subcontractor, that Bishop would have to begin the electrical work or Ryan would be compelled to hire a nonunion subcontractor. Bishop said he could not work on the job while the picket was there. Bishop then called Jack Schiller, the business agent of the Electrical Workers' local in Salem, and spoke to him in Ryan's presence. Bishop told Schiller what Ryan had said, and tried to persuade him to try to get the Council to remove the picket so that Bishop's electricians could start work. Schiller then spoke to Ryan. Schiller told Ryan (referring to Ryan's threat to replace Bishop with a nonunion electrical subcontractor), "You wouldn't do that to me, would you?" The discussion between the three men ended with Bishop saying he could not start the electrical work for Ryan because there was no hope of the picket leaving (R. 21; 107-108).

Since the electrical subcontractor could not send his men across the picket line and the employees of the plumbing subcontractor had left the job when the

---

credited the testimony of Ryan and Blair over Krutsinger's denial (R. 20 ns. 10-11).

picketing commenced, Ryan engaged nonunion subcontractors to replace them (R. 21; Tr. 118-119, 103-106, 108-109). Thereafter, Association Manager Blair, on Ryan's behalf, tried to persuade the business agent of the Plasterers' local to let the plastering subcontractor begin his work, but the agent refused to let the plasterers cross the picket line (R. 21; Tr. 109, 119-122).

As shown, the picketing had commenced on February 12. An unfair labor practice charge having been filed and a complaint having been issued against respondents, the Board's Regional Director sought interim relief in the federal district court, pursuant to Section 10(1) of the Act. On April 22 the district court in Oregon enjoined the picketing pending the Board's final decision. It is thus conceded that the picketing was conducted for more than 30 days without the filing of an election petition under Section 9(c) of the Act (R. 6, 14, 21 n. 12). Because of the picketing and the resultant interruption of the plumbing, electrical, plastering and other work, Ryan's construction on the original 34 motel units was not yet fully completed at the time of the hearing on May 27 (R. 19 n. 8, 21; Tr. 60, 69, 98, 109).

II. The Board's Conclusions and Order

On the basis of the foregoing, the Board found that a purpose of respondents' picketing was to force or require Ryan to recognize and bargain with respondent Carpenters, although it was not the certified representative of Ryan's employees at any time during

the picketing. The Board concluded that since respondents continued their recognitional picketing for more than 30 days without filing an election petition as required by Section 8(b)(7)(C), respondents by their conduct violated that section of the Act (R. 21-23, 35).

The Board's order requires respondents to cease and desist from the unfair labor practices found, and to post appropriate notices (R. 23-25, 35-36).

ARGUMENT

I. The Board Properly Exercised Jurisdiction in the Proceeding

As shown *supra*, pp. 2-3, to construct and to furnish the initial 34 units of the motel at the Albany jobsite, Ryan purchased $54,788.91 worth of goods originating from out-of-state. That this substantial shipment of goods in interstate commerce establishes the Board's statutory jurisdiction in the instant case, is manifest. *N.L.R.B.* v. *Stoller*, 207 F. 2d 305, 307 (C.A. 9), cert. denied, 347 U.S. 919; *N.L.R.B.* v. *Aurora City Lines*, 299 F. 2d 229, 231 (C.A. 7); *N.L.R.B.* v. *West Side Carpet Co.*, 329 F. 2d 758, 760 (C.A. 6).

Moreover, Ryan's operations satisfy the Board's self-imposed and discretionary jurisdictional standard for non-retail enterprises; while engaged in building the 34 motel units, he made interstate purchases for their construction and furnishing whose value exceeded $50,000. *Siemons Mailing Service*, 122 NLRB 81, 85; *Bon Hennings Co.* v. *N.L.R.B.*, 308 F. 2d 548,

550-551 (C.A. 9). See also, *N.L.R.B.* v. *International Union of Operating Engineers, Local 571*, 317 F. 2d 638, 643 n. 5 (C.A. 8); *N.L.R.B.* v. *Ozark Dam Constructors*, 190 F. 2d 222, 226-228 (C.A. 8). Before the Board respondents asserted that since Ryan intended to continue to own and to operate the motel, the Board should apply its appropriate *retail* jurisdictional standard (i.e., gross annual revenue in excess of $500,000 and more than 25 per cent transient guests), and accordingly should refuse to exercise jurisdiction. However, as the Trial Examiner noted (R. 18) the applicability of the Board's non-retail standard is self-evident, as during the events involved herein Ryan was engaged solely in his capacity as a builder of the motel, which was not yet even in operation. See, *N.L.R.B.* v. *Burnett Construction Co.*, 350 F. 2d 57, 59-60 (C.A. 10).

In short, in the instant case the Board, whose statutory jurisdiction over Ryan's operations is undisputed, clearly did not abuse the wide discretion it possesses in applying its self-imposed jurisdictional standards. *N.L.R.B.* v. *Local Joint Executive Board, etc.*, 301 F. 2d 149, 151-153 (C.A. 9), and decision of this Court there quoted; *N.L.R.B.* v. *Hod Carriers', Building & General Laborers' Union of America, Local No. 652 AFL-CIO*, (C.A. 9) No. 19708, decided September 27, 1965 (60 LRRM 2189, 2191); *Memphis Moldings, Inc.* v. *N.L.R.B.*, 341 F. 2d 534 (C.A. 6), and cases cited.

II. Substantial Evidence Supports the Board's Finding That Respondents Violated Section 8(b)(7)(C) of the Act

Section 8(b)(7)(C) of the Act (see, *infra*, pp. 20-21) prohibits a union that is not currently certified as the representative of an employer's employees from picketing that employer for recognition or organizational purposes for more than a reasonable time, not to exceed 30 days, unless a petition for an election is filed during that period. It is undisputed that respondent Carpenters was never certified as the representative of Ryan's employees, that respondents' picketing was carried on for more than 30 days, and that no representation petition was filed within that period. Thus, the sole question presented is whether an object of respondents' picketing was recognition and bargaining, as the Board found; or whether, as respondents contended, the sole object of their picketing was to publicize Ryan's failure to conform to area wage standards.

Section 8(b)(7) does not ban all picketing, but only picketing which has an object of recognition or organization. In the Board's view, picketing by a union to induce an employer to raise wage rates to the scale prevailing in the area need not be equated with an objective of recognition or organization. The Board has recognized that a union may legitimately be concerned that a particular employer is undermining area standards of employment by maintaining lower standards, and that the union may be willing to forego recognition to eliminate such substandard conditions. See, relied on by respondents, *Houston*

Building and Construction Trades Council (Claude Everett Construction Co.), 136 NLRB 321, 322-323; *International Hod Carriers, Building and Common Laborers' Union of America, Local No. 41, AFL-CIO (Calumet Contractors Association)*, 133 NLRB 512, 513. As the Board stated in *Houston, supra,* (136 NLRB at 323):

> [The Union's] admitted objective to require the Association . . . to conform to standards of employment to those prevailing in the area, is not tantamount to, nor does it have an objective of recognition or bargaining. A union may legitimately be concerned that a particular employer is undermining area wage standards of employment by maintaining lower standards. It may be willing to forego recognition and bargaining provided subnormal working conditions are eliminated from area considerations.

Accord: *Local Union 714, Plumbing and Pipe Fitting Industry (Keith Riggs Plumbing and Heating Contractor)*, 137 NLRB 1125, 1125-1126. And see, *N.L.R.B.* v. *Local 182, Teamsters*, 314 F. 2d 53, 59 n. 3 (C.A. 2). However, since Section 8(b)(7) uses the phrase "an object," so long as one of the Union's objectives is illegal, it is immaterial that it might also have other legitimate objectives. *N.L.R.B.* v. *Local 182, Teamsters, supra,* 314 F. 2d at 58-59. *Penello* v. *Retail Store Employees*, 188 F. Supp. 192, 199 (D.C. Md.), aff'd 287 F. 2d 509 (C.A. 4); *Local 705, Teamsters* v. *N.L.R.B.*, 307 F. 2d 197, 198 (C.A.D.C.); *Dayton Typographical Union No. 57* v. *N.L.R.B.*, 326 F. 2d 634, 639-645 (C.A. D.C.). The

question of whether a forbidden objective exists is one of fact (*Local 182, supra*, 314 F. 2d at 58-59 n. 2) and, we submit, the Board's finding that such objective did exist in this case is supported by substantial evidence on the record as a whole. It is, accordingly, entitled to stand. *N.L.R.B.* v. *Monterey County Building & Construction Trades Council*, 335 F. 2d 927, 931 (C.A. 9), cert. denied 380 U.S. 913, enforcing 142 NLRB 139; *Universal Camera Corp.* v. *N.L.R.B.*, 340 U.S. 474.

As shown in the Statement, *supra*, pp. 3-8, Carpenters' Representative Krutsinger appeared at the Albany jobsite and was apprised by Ryan that, as he did in Salem, Ryan intended to use his nonunion employees and subcontract work to both union and nonunion subcontractors. As a result, respondents commenced picketing, with signs which made no reference to area wage standards, but simply bore the legend "Non-union". As stated in *McLeod* v. *Local 3, IBEW*, 57 LRRM 2052, 2057 (D.C. N.Y.), ". . . why have the only legend on the sign read that the employees are not members of the union if that end is not one of the objectives of the picketing?" Accord: *Sperry* v. *Lawrence Typographical Union No. 570*, 238 F. Supp. 498, 501 (Kansas); *American Federation of Grain Millers, Local 16 (Bartlett Co.)*, 141 NLRB 974, 979; *Drug and Hospital Employees' Union (Janet Sales)*, 136 NLRB 1564, 1568; *Local 445, Teamsters (Colony Liquor)* 145 NLRB 263, 266-267. Moreover, when Ryan confronted Krutsinger and asked what was necessary to remove the picket line, over Ryan's protestation that he was allowed to oper-

ate nonunion in Salem Krutsinger adamantly insisted that Ryan must "sign a union contract." Furthermore, Krutsinger indicated that even if respondents permitted work on the 34 units to resume by removing the picket line, Ryan "would have to be union" when he began construction of the restaurant and additional 32 units. Krutsinger reiterated that a union contract was a condition of removing the picketing when Blair, manager of the employer association of which Ryan was a member, asked Krutsinger what it would take "to get rid of the picket." In short, by their own declarations respondents revealed that the picketing was aimed at putting Ryan into the ranks of "union" contractors. Moreover, respondents' demand for a union contract necessarily implied bargaining and recognition. *Scobell Chemical Co.* v. *N.L.R.B.*, 267 F. 2d 922, 925 (C.A. 2), and cases cited; *N.L.R.B.* v. *International Union of Operating Engineers, Local 571, supra*, 317 F. 2d at 641-642.

During the weeks of picketing that followed, Ryan, along with Association Manager Blair, made several attempts to persuade respondents' officials to remove the picketing. Declarations that they were considering the matter and failures to return promised telephone calls and to appear at scheduled meetings, constituted respondents' sole reaction.[5] Thus, for over 2

---

[5] Respondents offered no reason, and we know of none, why their declarations showing that the picketing was for a recognitional objective should be discounted because they were uttered in discussions which were all initiated by Ryan or Blair speaking on his behalf. Respondents, therefore, have provided no basis for their attack on the Board's refusal (R. 22 n. 14) to attach any significance to the fact that but for

months, without filing an election petition to establish respondent Carpenters' representative status, respondents maintained a picket line for the manifest purpose of forcing Ryan to recognize and bargain with the Carpenters as the representative of Ryan's employees. The Board, therefore, properly concluded that respondents violated Section 8(b)(7)(C) of the Act. *N.L.R.B.* v. *Monterey County Building & Construction Trades Council, supra; Local 705, Teamsters* v. *N.L.R.B., supra; Dayton Typographical Union No. 57* v. *N.L.R.B., supra; N.L.R.B.* v. *Sapulpa Typographical Union No. 619*, 321 F. 2d 771, 774 (C.A. 10).

The Board had ample warrant for rejecting respondents' defenses. Thus, the Trial Examiner's refusal to credit Krutsinger's denials that he conditioned the removal of the picket line on Ryan's entering into a union contract (see *supra*, p. 6 n. 4) merely raises an issue of credibility. Such issues, as this Court has recognized, are for determination by the trier of fact. *N.L.R.B.* v. *U.S. Divers Co.*, 308 F. 2d 899, 905 (C.A. 9). Accord: *N.L.R.B.* v. *Walton Mfg. Co.*, 369 U.S. 404, 407-408.

Ryan or Blair coming to them, respondents would have remained silent after establishing the picket line. As the Board said of a similar contention in *Operative Plasterers' & Cement Masons' International Association, Local Union No. 44, AFL-CIO (Penny Construction Company, Inc.)*, 144 NLRB 1298, 1300 n. 2, petition for enforcement dismissed on unrelated grounds, unreported order of court, No. 7701 (C.A. 10), November 27, 1964: "We fail to understand why an employer who is being picketed by a labor organization may not inquire from the representative of that labor organization as to the object of the picketing."

The record totally refutes respondents' insistence that they, nonetheless, picketed with the sole object of inducing Ryan to conform with area wage standards. As noted by the Board (R. 21), it is conceded that before the picket line was established none of respondents' officials asked Ryan what wages or other benefits his employees received. Nor does the record show that respondents knew or were ever disturbed about such factors (R. 21; 90-91, 97-98, 131, 135-136). The sole object of respondents' concern was Ryan's use of "non-union" employees and subcontractors.

Cases relied on by respondents (*supra*, pp. 11-12) do not support their defense. In each case the evidence established that the union's current objective was not recognition or bargaining, but conformity with area wage standards. Thus, in *Houston*, the union's picket signs protested the "substandard wages and conditions being paid by the employer," and the union had repeatedly protested "against substandard wages . . . without ever requesting recognition as . . . bargaining representative." (136 NLRB at 322-323). In *Calumet*, the unions "clearly disclaimed an objective [of recognition and bargaining] and sought only to eliminate subnormal working conditions from area considerations." (133 NLRB at 513). See also, *Local Union No. 741, etc., supra*, 137 NLRB at 1126. As shown, far from demonstrating an overweening concern over Ryan's alleged failure to meet working conditions prevailing in the area, respondents displayed no concern whatsoever. The evidence showing a recognitional purpose is, therefore, unrebutted. In

sum, here as in *N.L.R.B.* v. *Local 182, Teamsters, supra*, 314 F. 2d at 59 n. 3, there is no proof "to support a finding that the union has a genuine interest in compelling the improvement of the labor conditions or eliminating the competition, even though the union does not become the bargaining representative."

Finally, the Union's picketing was not protected by the second proviso to Section 8(b)(7)(C) (see *infra*, p. 21), which privileges recognitional picketing where that picketing merely truthfully advises the public that an employer does not employ members of, or have a contract with, a union, unless an effect of such picketing is to halt pickups or deliveries, or the performance of services. The picket line immediately induced the union employees of Ryan's plumbing subcontractor to cease working. As respondents' rejected Ryan's repeated requests to remove the picket line, he finally resorted to engaging a different and nonunion subcontractor to install the plumbing. The delay caused by this, and by the refusal of other locals to grant the electrical and plastering subcontractors permission to start work with their union employees as long as the picketing continued, had already resulted in delaying Ryan's completion of the 34 motel units for almost 6 weeks at the time of the hearing. Accordingly, the proviso to Section 8(b)(7)(C) does not exempt respondents' picketing since it caused work stoppages which in fact interfered with and disrupted Ryan's operations. *N.L.R.B.* v. *Local 239, Teamsters*, 289 F. 2d 41, 45

(C.A. 2), cert. denied, 368 U.S. 833; *N.L.R.B.* v. *Local 542, Operating Engineers*, 331 F. 2d 99, 104 (C.A. 3); *Local Union 429, IBEW (Sam M. Nelson)*, 138 NLRB 460, 463. Accord: *Barker Brothers Corp.* v. *N.L.R.B.*, 328 F. 2d 431, 434-437 (C.A. 9).

Moreover, respondents' entire course of conduct belies their assertion that their picketing was aimed solely at advising the public within the meaning of the proviso. As shown, other local unions refused the requests of Ryan's union subcontractors (plumbing, electrical, and plasterer) to allow them to work behind the picket line. Both of respondents' representatives (Krutsinger and Westergard) indicated to Ryan that the only way those union subcontractors could perform their work was if Ryan took the action respondents' demanded and thereby got "rid of the picketing" (*supra*, pp. 6-7). As the Trial Examiner concluded (R. 22-23) the above facts demonstrate that respondents aimed the picketing, successfully, at the other local unions to bring about their cooperative action, and that the picket line at the jobsite was not established merely to advise the public of Ryan's nonunion status. See, *N.L.R.B.* v. *Local 3, International Brotherhood of Electrical Workers, AFL-CIO (Jack Picoult)*, 317 F. 2d 193, 197-200, (C.A. 2); same case, after remand, 339 F. 2d 600, enforcing 144 NLRB 5; *Local 89, Chefs, Cooks, Pastry Cooks and Assistants Union of New York, a/w Hotel, Restaurant Employees and Bartenders International Union, AFL-CIO, et al. (Cafe Renaissance, Inc.)*, 154 NLRB No. 14 (59 LRRM 1725). See also, *Leonard Smitley*,

etc., d/b/a Crown Cafeteria v. *N.L.R.B.*, 327 F. 2d 351 (C.A. 9).

CONCLUSION

For the reasons stated, it is respectfully submitted that a decree should issue enforcing the Board's order in full.

ARNOLD ORDMAN,
General Counsel,

DOMINICK L. MANOLI,
Associate General Counsel,

MARCEL MALLET-PREVOST,
Assistant General Counsel,

GLEN M. BENDIXSEN,
Attorney,

National Labor Relations Board.

November 1965.

CERTIFICATE

The undersigned certifies that he has read the provisions of Rules 18 and 19 of this Court, and in his opinion the tendered brief conforms to all requirements.

MARCEL MALLET-PREVOST
Assistant General Counsel
National Labor Relations Board

APPENDIX A

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Secs. 151, *et seq.*) are as follows:

* * * *

Unfair Labor Practices

* * * *

[Sec. 8] (b) It shall be an unfair labor practice for a labor organization or its agents—

* * * *

(7) to picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective bargaining representative, unless such labor organization is currently certified as the representative of such employees: (A) where the employer has lawfully recognized in accordance with this Act any other labor organization and a question concerning representation may not appropriately be raised under section 9 (c) of this Act, (B) where within the preceding twelve months a valid election under section 9 (c) of this Act has been conducted, or (C) where such picketing has been conducted without a petition under section 9 (c) being filed within a reasonable period of time not to exceed thirty days from the commencement of such picketing: *Provided*, That when such a petition has been filed the Board shall forthwith, without regard to the provisions of section 9 (c)

(1) or the absence of a showing of a substantial interest on the part of the labor organization, direct an election in such unit as the Board finds to be appropriate and shall certify the results thereof: *Provided further*, That nothing in this subparagraph (C) shall be construed to prohibit any picketing or other publicity for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization, unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver or transport any goods or not to perform any services. Nothing in this paragraph (7) shall be construed to permit any act which would otherwise be an unfair labor practice under this section 8 (b).

* * * *

PREVENTION OF UNFAIR LABOR PRACTICES

Sec. 10 (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: * * *

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or

agency, at a place therein fixed, not less than five days after the serving of said complaint: *Provided*, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his charge. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon.

(c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: * * *

* * * *

(e) The Board shall have power to petition any court of appeals of the United States, . . . within any circuit . . . wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order; and shall file in the court the record in the proceedings, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the

court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the record . . . . Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the . . . Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

* * * *

(l) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8 (b), or section 8(e), or section 8(b)(7), the preliminary investigation of such charge shall be made forth-

with and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: * * * Provided further, That such officer or regional attorney shall not apply for any restraining order under section 8(b)(7) if a charge against the employer under section 8(a)(2) has been filed, and after the preliminary investigation, he has reasonable cause to believe that such charge is true and that a complaint should issue. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: Provided further, That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. * * *"

APPENDIX B

Pursuant to Rule 18(f) of the Rules of the Court

General Counsel's Exhibits

No.	Identified	Received in Evidence
1-A to 1-H	5	5
2A to 2D	10	13
3	14	15
4-A to 4-B	15	17
5-A to 5-B	17	18
6-A to 6-B	23	29
7	41	43
8-A to 8-C	46	48
9	52	55
10	80	83

☆ U. S. GOVERNMENT PRINTING OFFICE; 1965 791900 303